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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,956	10/15/2003	Tamir Massad	U 014854-9	7959
140 7590 08/18/2008 LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023				
EXAMINER				
JANG, CHRISTIAN YONGKYUN				
ART UNIT		PAPER NUMBER		
3735				
MAIL DATE		DELIVERY MODE		
08/18/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/685,956

**Applicant(s)**

MASSAD, TAMIR

**Examiner**

CHRISTIAN Y. JANG

**Art Unit**

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 189-194 and 288 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 189-194 and 288 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/ISAC)  
Paper No(s)/Mail Date 10/15/03, 03/15/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

1. Amendment to the specification is acknowledged. Claims 189-194 and 288 are currently pending in instant application.

***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Israel on 07/06/1999. It is noted, however, that applicant has not filed a certified copy of the 130818 application as required by 35 U.S.C. 119(b).

***Information Disclosure Statement***

3. IDS submitted on 10/15/03 has been considered in part. IDS submitted on 03/15/05 has been considered in full.
4. Applicant should note that the large number of references in the attached IDS have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. See MPEP 609.05(b). Applicant is requested to point out any particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

***Specification***

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 189-192, 194, and 288 rejected under 35 U.S.C. 102(b) as being anticipated by Hardway, Jr. et al. (USP #4,033,332).

8. As to claims 189-191 and 288, Hardway teaches an apparatus for measuring mechanical deformation comprising a housing (14a), a base electrode (15), and a deformable electrode (16a) at a fixed distance from the base electrode such that the capacitance is varied responsive to deformation of the deformed electrode (col. 6 line 47 - col. 7 line 11; col. 12, lines 51-60). Hardway teaches that the user is coupled to the device (Fig. 1) so as to deform responsive to the respiration of the user (Abs).

9. As to claims 192 and 194, Hardway teaches a member mechanically coupled to the deformable electrode and in physical contact with the electrode such that movement of the member deforms the deformable electrode (17).

***Claim Rejections - 35 USC § 103***

10. Claim 193 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hardway, Jr. et al. (USP #4,033,332) in view of Sciarra (USP #5,131,399).

11. As to claim 193, Hardway fails to teach a belt, adapted to be placed around a torso of a user. Sciarra teaches a belt (22) for monitoring user respiration movement (Abs). It would have been obvious to modify Hardway to include a belt as taught by Sciarra in order to enable the measurement of respiratory movement in various user positions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN Y. JANG whose telephone number is (571)270-3820. The examiner can normally be reached on Mon. - Fri. (8AM-5PM) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/  
Supervisory Patent Examiner  
Art Unit 3735

CJ  
/C. Y. J./  
Examiner, Art Unit 3735  
08/13/08